Supreme Court, U.S.
FILED
NOV 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-748

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

UNITED STATES ex rel. CHUNIE, et al.,

Petitioners,

vs.

MARIE RINGROSE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

The Act of 1851 implementing the Treaty of Guadalupe Hidalgo was enacted for the overriding purpose of providing repose to land titles in California.

The question presented is:

Whether petitioners' claim to a right of permanent occupancy of islands patented to private respondents' predecessors in Act of 1851 proceedings is barred by the failure of petitioners' predecessors to present a claim in such proceedings.

REQUEST FOR EARLIEST POSSIBLE CONSIDERATION

Respondents respectfully request that, to the extent practicable, the Court consider the petition at the earliest date permitted by its calendar. Certain of the private respondents, who jointly own one of the islands at issue, seek to complete by year-end 1986 a sale of their island to the United States of America for use as a national park. Failure to close this sale by the end of 1986 would cause severe adverse financial consequences for these respondents because of changes in the tax code. Respondents respectfully submit that the petition lacks merit and can be disposed of quickly, permitting this action to be concluded and the sale closed before year end.

LIST OF PARTIES

1. Petitioners Chunie (Frances S. Herrera) and The Brotherhood of the Tomol, Inc., a California corporation.
2. Joint Respondents Marie Ringrose, Ilda McGuinnes, Pier Gherini, Frances Gherini, The Nature Conservancy, Santa Cruz Island Company, Alexander Lennox Vail, James Vail Wilkinson, Nathan Russell Vail, Margaret Vail Woolley, and The Vickers Company, Ltd.
3. Respondent the State of California. Private respondents note the following:
   (a) Although the United States was named as a plaintiff in this suit, petitioners apparently have not obtained the consent of the United States to sue in

its name. Also, although the suit was filed as a class action, no class was certified.

(b) The Nature Conservancy is a District of Columbia non-profit corporation with no parent company, subsidiaries or affiliates.

(c) The Santa Cruz Island Company is a California corporation with no parent company, subsidiaries or affiliates.

(d) The Vickers Company is a California corporation with no parent company, subsidiaries or affiliates.

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RESPONDENTS' JOINT BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case involves property rights in Santa Cruz and Santa Rosa Islands, which lie off the California coast near the City of Santa Barbara. As against respondent State of California, petitioners claim the right of permanent occupancy of the sovereign tide and submerged lands and tidelands surrounding the islands. (The State of California is filing a separate opposition to the petition for certiorari.) The remaining respondents (who are jointly filing this opposition) consist of a group of individuals and private entities who hold record fee simple title to the islands (hereafter referred to as the "private respondents"). Petitioners assert that the private respondents' fee simple title to the islands is burdened by a right of permanent occupancy belonging to petitioners. Their claimed right of occupan-

cy, as against both the State of California and the private respondents, is founded on the theory that petitioners hold unextinguished Indian aboriginal title to the islands.

Those private respondents who collectively own Santa Cruz Island trace their title back to an 1839 grant of the island to Andres Castillero by the Republic of Mexico. Those private respondents who own Santa Rosa Island trace their title back to an 1843 grant of the island by the Republic of Mexico to Antonio and Carlos Carrillo.

In 1848, pursuant to the Treaty of Guadalupe Hidalgo which marked the end of the Mexican-American War, Mexico ceded California to the United States. See Treaty of Guadalupe Hidalgo, Feb. 2, 1848, United States-Mexico, 9 Stat. 922 (1848). Shortly thereafter in 1851, Congress passed the Act of March 3, 1851:

"An Act to ascertain and settle the private Land Claims in the State of California," ch. 41, 9 Stat. 631 (1851) (the "Act of 1851").

Pursuant to the Act of 1851, any person claiming land by virtue of any right or title derived from the Spanish or Mexican governments was required to present a claim within two years to the California Board of Land Commissioners, or the claim was forever barred. Id. at §§ 1, 8, 13. If a claim was confirmed at the conclusion of the proceedings, a federal land patent was issued to the claimant. Id. at § 13. All lands which were not the subject of confirmed claims became part of the public domain available for disposal by the United States. Id.

In 1852, both Andres Castillero, to whom Mexico had granted Santa Cruz Island, and the successors-in-interest to

the Carrillos, to whom Mexico had granted Santa Rosa Island, filed petitions to confirm their respective titles under Act of 1851 proceedings. Ultimately, this Court confirmed Castillero's title. United States v. Castillero, 64 U.S. (23 How.) 464, 16 L. Ed. 498 (1860). He received a federal land patent to Santa Cruz Island in 1867. Chunie v. Ringrose, 788 F.2d at 646 (Pet. B-15). Similarly, the Carrillo successors' title to Santa Rosa Island was ultimately confirmed by the United States District Court for the Southern District of California. Manuelo Carrillo de Jones v. United States, (S.D. Cal., Dec. Term 1855) (unpublished). The Carrillo successors received a federal land patent to Santa Rosa Island in 1871. Chunie v. Ringrose, 788 F.2d at 646 (Pet. B-15).

For more than 100 years, title to Santa Cruz and Santa Rosa Islands has

passed peacefully to successive private owners who relied on their predecessors' record titles founded on the federal land patents issued pursuant to the Act of 1851.

Petitioners' predecessors did not present any claim to the islands in Act of 1851 proceedings. Despite this, petitioners brought this action asserting that they have a right of permanent occupancy of the islands and surrounding tide and submerged lands. The district court dismissed the action for failure to state a claim upon which relief could be granted.

On appeal, relying on an unbroken line of this Court's decisions rendered as early as 1855, the Ninth Circuit concluded "that the district court correctly held that the Chumash, claiming a right of occupancy based on aboriginal title, lost all rights in the land when they

failed to present a claim to the commissioners." Chunie v. Ringrose, 788 F.2d at 646 (Pet. B-15). A petition for rehearing to the Ninth Circuit was denied.

REASONS WHY THE PETITION SHOULD BE DENIED

I

THE NINTH CIRCUIT'S DECISION THAT FAILURE TO PRESENT CLAIMS IN ACT OF 1851 PROCEEDINGS IS A CONCLUSIVE BAR TO THE SUBSEQUENT ASSERTION OF SUCH CLAIMS SQUARELY FOLLOWS AN UNBROKEN LINE OF SUPREME COURT AUTHORITY AND DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR ANY OTHER COURT.

In an unbroken line of authority, this Court has held that title confirmed in proceedings under the Act of 1851 is conclusive and not subject to collateral attack.

In 1855, shortly after the Act was passed, this Court noted that the purpose of the Act of 1851 was "to place the titles to land in California upon a stable foundation, and to give parties who

possess them an opportunity of placing them on the records of the country, in a manner and form that will prevent future controversy." Fremont v. United States, 58 U.S. (17 How.) 542, 553, 15 L. Ed. 241 (1855). To effectuate this purpose, this Court held in 1859 that any claim not so presented was lost. United States v. Fossatt, 62 U.S. (24 How.) 445, 16 L. Ed. 185 (1859).

> "This jurisdiction [of the Act of 1851] comprehends every species of title or right, whether inchoate or complete; whether resting in contract or evinced by authentic act and judicial possession."

Fossatt, 62 U.S. (24 How.) at 448.

Two later decisions of the Court -- Barker v. Harvey and United States v. Title Insurance & Trust Co. -- specifically addressed the arguments advanced here by petitioners and rejected them as

improper attempts to relitigate issues of title to lands which were subject to the Act of 1851. Barker v. Harvey, 181 U.S. 481, 21 S. Ct. 690, 45 L. Ed 963 (1901); United States v. Title Insurance & Trust Co., 265 U.S. 472, 44 S. Ct. 621, 68 L. Ed. 1110 (1924). In both of these decisions, this Court held that Indian claims to land acquired by the United States from Mexico were extinguished if they were not presented in proceedings conducted under the Act of 1851.

Barker was an action to quiet title resting on a federal patent issued after Mexican grants were confirmed in proceedings under the Act of 1851. The Indian defendants challenged plaintiff's federal patent on the grounds that a provision in one of the grants provided that the grantee could "not molest (prejudicar) the Indians that thereon may be established," and that the Indians had

occupied the land in issue before the Mexican grants. 181 U.S. at 493.

This Court, in considering the contentions of the Indians, determined:

> "If these Indians had any claims founded on the action of the Mexican government they abandoned them by not presenting them to the commission for consideration. . . . If it be said that the Indians do not claim the fee, but only the right of occupation, and therefore, they do not come within the provision of § 8 [of the Act] as persons 'claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government,' it may be replied that a claim of right to permanent occupancy of land is one of far reaching effect, and it could not well be said that the lands which were bur-

dened with the right of permanent occupancy were a part of the public domain and subject to the full disposal of the United States."

181 U.S. at 491-92.

Thus, regardless of the nature of the claim asserted, this Court held in Barker that the Act of 1851

"not only permitted but required all claims to be presented to the board, and barred all from future assertion which were not presented within two years after the date of the act."

181 U.S. at 490.

This Court's 1901 Barker holding rejecting the claims of Indians for failure to present them as required by the Act of 1851 was reaffirmed twenty-three years later in United States v. Title Insurance & Trust Co., supra. The Indians there claimed that under the laws of Mexico they had been entitled to contin-

uous and undisturbed occupancy of land which had been patented to defendants' predecessor in proceedings under the Act of 1851. 265 U.S. at 482.

Asserting that the Indian right of permanent occupancy was consistent with the defendants' title, the United States (on behalf of the Indians) argued:

> "The Indian title is both legal and equitable in its nature and has been variously likened to an easement, life estate, trust or use with which the fee is charged. . . . Further, when the fee passes from the Government into private hands under a general conveyance, it is, for a time being, only a naked fee."

265 U.S. at 474. In addition, the United States (on behalf of the Indians) attempted to distinguish Barker by claiming that "the Indian claim [in Barker] was presented as though founded on a pro-

tective clause in an earlier grant . . . and its true basis, viz: the tribal possessory title, was apparently not emphasized," 265 U.S. at 477, whereas the Indians in Title Insurance purportedly "became entitled to the 'continuous and undisturbed' occupancy and use of a part of the lands in the [Mexican] grant before it was made." 265 U.S. at 482.

This Court rejected the argument and declined the United States' invitation either to distinguish or overrule Barker, finding instead that the Barker "case and this [Title Insurance] are so much alike that what was said and ruled in that should be equally applicable in this." 265 U.S. at 485-86.

Six months after its decision in Title Insurance, this Court held that the Barker-Title Insurance doctrine required Indians to present their claims, without regard to whether the Indians were

Mission Indians who settled on or near the Spanish Missions, or other Indians. Super v. Work, 3 F.2d 90 (D.C. Cir. 1925), aff'd per curiam. 271 U.S. 643 (1926).

In 1941, this Court again emphasized that Indian claims based on aboriginal title were barred if they were not submitted under the Act of 1851. United States ex rel. Hualpai Indians v. Santa Fe Pacific Railroad Co., 314 U.S. 339, 350, 62 S. Ct. 248, 86 L. Ed. 260 (1941) ("the Act of 1851 was interpreted as containing machinery for extinguishment of claims, including those based on Indian right of occupancy"). And, fourteen years later, the Court reiterated the principle that the United States as the sovereign is free to extinguish aboriginal title without any obligation to pay compensation. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 285, 75

S. Ct. 313, 99 L. Ed. 314 (1955). Finally, this Court's recent decision in Summa Corp. v. California ex rel. State Lands Commission, 466 U.S. 198, 104 S. Ct. 1751, 80 L. Ed. 2d 237 (1984), recognizes the continuing validity of Barker and Title Insurance by reaffirming the principle that claims to California land originally under Mexican jurisdiction are barred if not presented in Act of 1851 land confirmation proceedings.

In Summa, the State of California asserted that it held a "public trust easement" over a privately-owned lagoon because the area was a tideland at the time that California became a state. After a thorough review of the Treaty of Guadalupe Hidalgo and the land confirmation proceedings established by the Act of 1851, the Court held that California could no longer assert an interest in the property. Reaffirming the importance of

providing repose to land titles, the Court held in Summa:

> "The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claims made in Barker and United States v. Title Insurance Co., must have been presented in the patent proceeding or be barred."

466 U.S. at 209.

Petitioners contend that this Court's decision in Cramer v. United States, 261 U.S. 219, 43 S. Ct. 342, 67 L. Ed. 622 (1923), a decision rendered fourteen months before this Court's decision in Title Insurance, is controlling here. According to petitioners, the Ninth Circuit's failure to follow Cramer renders the Ninth Circuit's decision in

conflict with a decision of the Court. However, because Cramer involves an entirely different question, the Ninth Circuit properly declined to apply it.

In Cramer, a patent had been issued in 1904 to confirm a grant made by the federal government in 1866 to defendant's predecessor. This 1866 grant excepted lands found to be "granted, sold, reserved, occupied by homestead settlers, pre-empted [sic] or otherwise disposed of." 261 U.S. at 225. Several Indian families had resided on the patented land continuously since as early as 1859. 261 U.S. at 226. This Court held that the portion of the land occupied by the Indians was within the clause of the 1866 grant excepting lands "reserved . . . or otherwise disposed of," and that the Indians thus had the right to continue their occupancy.

Cramer did not involve either a patent issued pursuant to Act of 1851 proceedings or an Indian claim of aboriginal title arising from occupancy prior to Mexico's cession of California to the United States. Thus, the Ninth Circuit here correctly distinguished Cramer, stating:

> "The Cramer court observed that the Indians in the case before it did not derive their claims from the Spanish or Mexican governments, and that there was no showing that they had occupied the land as early as 1848, when the Treaty was signed, or 1851, when the land confirmation act was enacted. Id. These facts explain the court's remark that the Cramer Indians 'are not shown to be within the terms of the Act of 1851 in any respect.'"

Chunie v. Ringrose, 788 F.2d at 646 (Pet. D-2).

In sum, the Ninth Circuit's opinion squarely follows this Court's decisions holding that claims not presented in Act of 1851 proceedings are barred.

II

THE NINTH CIRCUIT'S RULING THAT INDIAN ABORIGINAL TITLE IS A CREATURE OF THE CONQUERING SOVEREIGN'S LAW CORRECTLY STATES THE RULE SET FORTH IN THIS COURT'S 1823 DECISION IN JOHNSON v. M'INTOSH AND DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR ANY OTHER COURT.

Petitioners argue that the Ninth Circuit's opinion is in conflict with this Court's opinions in Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 3 L. Ed. 162 (1810), and Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 5 L. Ed. 681 (1823) (Pet. 17-18), because the Ninth Circuit stated that aboriginal title is "necessarily a creature of the conquering sovereign's law." Chunie v. Ringrose, 788 F.2d at 642 (Pet. B-4 to B-5). Apparently, peti-

tioners assert that aboriginal title exists in the "abstract" and is not "derived from" the laws of any nation and, therefore, that petitioners' predecessors did not come within the language of the Act of 1851 requiring "every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government" to present his or her claim to the Commissioners within two years. Act of 1851 §§ 1, 8, 13. Petitioners' authorities simply do not support their novel concept of aboriginal title.

First, the language quoted in the petition as the purported "ruling" of this Court in Fletcher v. Peck is merely a recitation of the argument of counsel and is not the opinion of this Court. Second, Johnson v. M'Intosh does not at all support petitioners' assertions regarding the source of aboriginal title.

Instead, Johnson v. M'Intosh recognized that aboriginal title is derived from the law of the conquering sovereign. As this Court explained in Tee-Hit-Ton Indians v. United States:

> "[Aboriginal title] is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties but which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians."

348 U.S. 272, 279, 75 S. Ct. 313, 99 L. Ed. 314 (1955) (emphasis added).

Aboriginal title, like every other title, was held in Barker to be subject to the Act of 1851. This Court reasoned in part:

"Undoubtedly by the rules of international law, and in accordance with the provisions of the treaty between the Mexican government and this country, the United States were bound to respect the rights of private property in the ceded territory. But such obligation is entirely consistent with the right of this government to provide reasonable means for determining the validity of all titles within the ceded territory, to require all persons having claims to lands to present them for recognition, and to decree that all claims which are not thus presented shall be considered abandoned."

181 U.S. at 486-87.

Barker explicity rejected the argument that Indian aboriginal claims were not derived from the Spanish or Mexican

governments. 181 U.S. 492. Instead, Barker and subsequent decisions of this Court have held that Indian aboriginal title claims, like all other claims, were required to be submitted in Act of 1851 proceedings or forever be barred.

Thus, there is no conflict between the Ninth Circuit's decision and this Court's decisions concerning aboriginal title claims and the Act of 1851.

III

THE NINTH CIRCUIT'S DECISION DOES NOT HOLD THAT INDIAN ABORIGINAL TITLE WAS "FROZEN" IN 1848 AND DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR ANY OTHER COURT.

Petitioners purport to establish a "conflict" between the Ninth Circuit's opinion and the decisions of this Court and the Court of Claims by asserting that

> "[t]he Appeal Panel's ruling that Chumash aboriginal title was frozen in 1848 when the United States acquired California from

Mexico under the Treaty of Guadalupe Hidalgo and extended its sovereignty to the area is clearly erroneous." (Pet. 19.) The opinion of the Ninth Circuit, however, does not make such a ruling, and consequently it does not conflict with this Court's decision in United States ex rel. Hualpai Indians v. Santa Fe Pacific Railway Co., 314 U.S. 339, 62 S. Ct. 248, 86 L. Ed. 260 (1941), or the Court of Claims decision in Sac and Fox Tribe of Indians of Oklahoma v. United States, 383 F.2d 991 (Ct. Cl.), cert denied, 389 U.S. 900 (1967).

Contrary to petitioners' assertion, the Ninth Circuit did not fix a cut-off date for the establishment of Indian title; the court held only that the last date on which the Chumash lost any claim of aboriginal title derived from a right of occupancy existing under Spanish or Mexican law was two years following the

enactment of the Act of 1851. Thus, no conflict exists between the Ninth Circuit's decision and this Court's decision in Santa Fe or the Court of Claims' decision in Sac and Fox Tribe.

IV

LONG ESTABLISHED SUPREME COURT AUTHORITY HAS RESOLVED IMPORTANT QUESTIONS AFFECTING TITLES TO LAND IN CALIFORNIA AND HAVING BEEN RESOLVED, SUCH QUESTIONS SHOULD NO LONGER BE CONSIDERED OPEN.

For over 100 years, the titles to Santa Cruz and Santa Rosa Islands have passed to successive private owners who relied on the record title of their predecessors as established in Act of 1851 proceedings. Titles to both of the islands were the subject of explicit judicial scrutiny: the Supreme Court's decision in United States v. Castillero, supra, and the district court's decision in Carrillo de Jones v. United States, supra.

A long line of judicial authority has directly addressed the scope of the Act of 1851 and has held that all claims not presented in Act of 1851 proceedings are forever barred. These decisions have, in the words of this Court, become rules of property.

> "'Where questions arise which affect titles to land, it is of great importance to the public that, when they are once decided, they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate, and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retro-

spective, and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.'"

Title Insurance, 265 U.S. at 486-87 (quoting Minnesota Co. v. National Co., 70 U.S. (3 Wall.) 332, 18 L. Ed. 42 (1866)). See also Summa Corp. v. California ex rel. State Lands Commission, 466 U.S. 198, 104 S. Ct. 1751, 80 L. Ed. 2d 237 (1984) (adverse effects on land titles counsel adherence to a settled interpretation).

Over sixty years have passed since this Court's decision in Title Insurance, making even more critical the need for continued adherence to the more than one hundred years of consistent judicial interpretation of the Act of 1851. Title

to much of the land in California is founded on federal patents issued pursuant to the Act of 1851. Questions concerning the effect of failure to submit claims under the Act of 1851 have long been resolved by this Court and should no longer be considered open.

CONCLUSION

For the foregoing reasons, the private respondents respectfully request that the petition be denied.

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